

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the Disciplinary
Hearing Relating to Wayne Allen
Quiram, License No. 6477.

RECOMMENDED ORDER GRANTING
MOTION FOR SUMMARY
DISPOSITION

The above-entitled matter came before Kathleen D. Sheehy, Administrative Law Judge, ^[1] on the Motion for Summary Disposition of the Complaint Investigation Committee for the Minnesota Board of Peace Officer Standards and Training. The Committee filed its Notice of Motion and Motion, Memorandum, and supporting Affidavit on July 18, 1995; the record closed upon receipt of the Licensee's Memorandum in Opposition on July 26, 1995

Appearing on behalf of Wayne Allen Quiram was Jerry Strauss, Strauss & Associates, 250 Second Avenue South, Suite 228, Minneapolis, MN 55401.

Appearing on behalf of the Complaint Investigation Committee for the POST Board was David E. Flowers, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103.

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject, or modify the Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact the Board, to ascertain the procedure for filing exceptions or presenting argument.

NOW, THEREFORE, based upon all of the files, records, and proceedings herein, and for the reasons set forth in the Memorandum attached hereto,

IT IS HEREBY RECOMMENDED:

- (1) That the Complaint Committee's Motion for Summary Disposition be GRANTED; and,
- (2) That the POST Board take action on Quiram's license based on his conviction for violating Minn. Stat. § 609.43(4).

Dated this 31st of August, 1995.

s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE

- Pursuant to Minn. Stat. § 14.62, subd. 1, the POST Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

Factual Background

The moving papers filed by the Complaint Committee establish the following undisputed facts:

1. Wayne Allen Quiram was licensed as a peace officer on November 1, 1979. His license is currently on active status, and he is and has been at all relevant times an employee of the Waterville Police Department, Waterville, Minnesota.
2. Between August 1, 1991 and July 31, 1992, Quiram submitted to his employer materially inaccurate information in daily activity reports relating to time spent on the job.
3. Based on the conduct described above, Quiram was charged in LeSueur County District Court on December 11, 1992 with felony theft and two counts of gross misdemeanor misconduct of a public officer, in violation of Minn. Stat. § 609.43(2) & (4).
4. On September 7, 1993, the POST Board published in the Minnesota State Register proposed amendments to Minn. R. 6700.1600. One of the proposed amendments made conviction of violating Minn. Stat. § 609.43 grounds for discipline by the Board. See 18 Minn. Reg. 755-67 (Sept. 7, 1993).

5. On February 28, 1994, the POST Board published in the Minnesota State Register its Notice of Adoption of the amendments referred to above. See 18 Minn. Reg. 1961 (Feb. 28, 1994). On that date the Board adopted the amendment making a conviction for violating Minn. Stat. § 609.43 grounds for discipline by the Board. See Minn. R. 6700.1600 H.

6. On April 25, 1994, Quiram waived his right to a jury trial on the criminal charges and submitted the matter on stipulated facts for decision by the court, the Hon. Richard C. Perkins. At all material times throughout the proceedings, Quiram was represented by his attorney, Jerry Strauss.

7. On August 18, 1994, the district court found Quiram guilty of violating Minn. Stat. § 609.43(4) but acquitted him of the felony theft charge and violation of Minn. Stat. § 609.43(2).

8. On November 1, 1994, the district court sentenced Quiram to 90 days in jail and a \$700 fine, but stayed execution of 75 days in jail and \$500 of the fine. He was placed on probation for one year.

9. On November 21, 1994, the POST Board notified Quiram by letter that based on his criminal conviction he had been named in a complaint alleging violation of Minn. R. 6700.1600 H. Enclosed with this letter was the Complaint giving Quiram notice of the hearing by the Complaint Investigation Committee on January 6, 1995 and a copy of the Case Synopsis prepared by the Acting Standards Coordinator.

10. On January 6, 1995, the Complaint Investigation Committee voted unanimously to find reasonable grounds to believe that a violation within the Board's enforcement jurisdiction had occurred and ordered an administrative hearing to be held unless the matter could be resolved by stipulation.

11. Although efforts were made to resolve the matter by stipulation, no agreement was reached.

12. On June 7, 1995, Quiram's attorney was served with the Notice and Order for Hearing setting a pretrial conference in this matter.

In addition, after the parties filed their memoranda Quiram's conviction was affirmed by the Minnesota Court of Appeals. The only issue on appeal was sufficiency of the evidence to sustain the conviction; the Court of Appeals concluded that the stipulated record made clear "the extent and materiality of Quiram's falsifications" as he covered up his personal telephone use while on duty. See State v. Quiram, No. C2-95-53 (Aug. 8, 1995).

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Motion for Summary Disposition

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Summary disposition is the administrative equivalent of summary judgment under Rule 56.02 of the Minnesota Rules of Civil Procedure. The same standards apply. See Minn. R. 1400.5500 K (1991); Minn. R. Civ. P. 56.03. Summary disposition of a claim is appropriate when there is no genuine issue as to any material fact and one party is entitled to a favorable decision as a matter of law. Minn. R. Civ. P. 56.03. A material fact is one which is substantial and will affect the result or outcome of the proceeding depending on the determination of that fact. Highland Chateau, Inc. v. Minnesota Dep't of Public Welfare, 356 N.W.2d 804 (Minn. App. 1984), rev. denied, (Minn. 1985). In considering a motion for summary disposition, the evidence must be viewed in the light most favorable to the non-moving party. Grondahl v. Bulluck, 318 N.W.2d 240 (Minn. 1982); Nord v. Herreid, 305 N.W.2d 337 (Minn. 1981).

With a motion for summary disposition, the initial burden is on the moving party to show facts establishing a prima facie case for the absence of material facts at issue. Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988). Once the moving party has established a prima facie case, the burden shifts to the non-moving party. Minnesota Mutual Fire and Casualty Co. v. Retrum, 456 N.W.2d 719, 723 (Minn. App. 1990). To successfully resist a motion for summary disposition, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case. Hunt v. IBM Mid America Employees Federal Credit Union, 384 N.W.2d 853, 855 (Minn. 1986). The non-moving party may not rely on general assertions; significant probative evidence must be offered. Minn. R. Civ. P. 56.05; Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. App. 1989); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The evidence introduced to defeat a summary disposition motion need not be admissible trial evidence, however. Carlisle, 437 N.W.2d at 715, citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

Legal Analysis

Quiram has not argued that any factual disputes require a hearing before a decision can be made in this matter. Instead, he argues that summary disposition should not be granted because the operative rule, Minn. R. 6700.1600 H, is not applicable in this case.

The rule provides in relevant part as follows:

Violations of the following standards of conduct by a licensee shall be grounds for revocation, suspension, or nonrenewal of license:

* * *

H. any conviction of a violation of Minnesota Statutes, section . . . 609.43, . . . or a conviction in another state or federal jurisdiction which would be a violation of the cited statutes if it had been committed in Minnesota.

Minn. R. 6700.1600 H.

The rule became effective on March 7, 1994, five days after the Notice of Adoption was published in the Minnesota State Register. See Minn. Stat. § 14.38, subd. 4 (amendments are effective five working days after publication of notice unless a different date is required by law or specified in the rule). Quiram does not dispute that the rule became effective on that date. He contends, however, that the rule should not apply to conduct that occurred prior to the effective date of the rule; in his case the criminal conduct underlying his conviction took place between August 1, 1991 and July 31, 1992. He further contends that retrospective application of the rule to him is prohibited by the due process and ex post facto clauses of the state and federal constitutions.

The terms of the rule make a conviction of violating Minn. Stat. § 609.43 the basis for discipline by the POST Board. No other event triggers application of the rule, and by operation of law the rule became effective prior to Quiram's conviction. The Complaint Board argues in effect that the rule is not retrospective, because it applies to convictions taking place after the effective date of the rule. Cf. State v. Samarzia, 452 N.W.2d 727 (Minn. App. 1990), rev. denied, (Minn. Apr. 25, 1990) (sentencing statute applied to sentencing occurring after its effective date, even though offense occurred before then); State v. Larson, 393 N.W.2d 238 (Minn. App. 1986) (critical date under statute is date of sentencing, not date of offense; statute permitting docketing of civil restitution orders applied to sentencings occurring after effective date of statute).

Quiram has cited no case law in which a disciplinary action based on prior criminal conduct was prohibited by the due process or ex post facto clauses. In support of his due process argument Quiram has cited by analogy several cases involving the void-for-vagueness doctrine, which requires that penal statutes define a criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. This argument is misplaced in that Quiram has made no claim that the rule is vague or open to arbitrary enforcement; his objection is rather that a highly specific rule governing professional misconduct cannot be applied to criminal activity occurring before the rule became effective.

His argument with regard to the ex post facto clause is similarly misplaced. The constitutional prohibition against passage of ex post facto laws is limited to laws involving punishment for crimes, Starkweather v. Blair, 245 Minn. 371, 71 N.W.2d 869, 879-881 (1955), and accordingly is not applicable in civil proceedings. Quiram claims the ex post facto clause was applied in civil proceedings in State ex rel. Coduti v. Hauser, 291 Minn. 297, 17 N.W.2d 504 (1945); however, as the Supreme Court made clear in Starkweather, in that case the term was used generically and no constitutional issue was involved. See Starkweather, 71 N.W.2d at 881.

Even if the disciplinary rule is deemed to have some retrospective effect, and even assuming the ex post facto clause applied in this proceeding, there appears to be no reason, constitutional or otherwise, why the rule should not be applied to Quiram. The United States Supreme Court has viewed similar legislation not as a punitive measure, but rather as a valid regulatory measure well within the police power of the state. For example, in Hawker v. New York, 170 U.S. 189 (1898), the Court upheld the application of a statute that disqualified a physician from practicing medicine based on a criminal conviction that occurred fifteen years before the statute's effective date. In concluding that there was no constitutional violation, the Court stated that:

[S]uch legislation is not to be regarded as a mere imposition of additional penalty, but as prescribing the qualifications for the duties to be discharged and the position to be filled, and naming what is deemed to be and what is in fact appropriate evidence of such qualification.

Id., 170 U.S. at 200.

Similarly, in DeVeau v. Braisted, 363 U.S. 144 (1960), the Court held that a statute disqualifying a union officer from employment, based on a criminal conviction that occurred thirty-six years prior to the effective date of the statute, did not violate the due process or ex post facto clauses. The Court reasoned that:

The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession.

Id., 363 U.S. at 160.

As in Hawker and DeVeau, the rule at issue in this case is one that regulates the qualification for an occupation based in part on whether the individual has been convicted of a particular crime. Quiram has made no argument that the rule itself has no rational basis, nor could he do so successfully. Furthermore, the facts do not suggest that subjecting Quiram to discipline is a particularly harsh or oppressive result. He is, after all, a police officer; he was convicted of a gross misdemeanor before the disciplinary rule became effective; and he was certainly on notice before the conduct took place that he was subject to significant penalties. It is not fundamentally unfair in any constitutional sense to discipline a police officer for violating a law prohibiting misconduct of public employees.

Accordingly, the POST Board may properly apply Minn. R. 1600.6700 H to Quiram; and based on his conviction of violating Minn. Stat. § 609.43(4), the POST Board has the authority to discipline him.

K. D. S.

^[1] This motion was originally filed with Administrative Law Judge Bruce D. Campbell. Judge Campbell died after the briefs were filed, but before he could prepare a recommendation on the Motion for Summary Disposition. Since no evidentiary hearing had been held, this matter was transferred to Administrative Law Judge Kathleen D. Sheehy for resolution.